IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

MFA.No. 1026 of 2002

OPMV.1087/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THALASSERY
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APPELLANT: PETITIONER:

P.K.DINESH, S/O. KUNHIRAMAN,
AGED 31 YEARS, PALAYADATH HOUSE,
P.O. KUTTUMUGAM, VIA. SREEKANDAPURAM.

BY ADV. SRI.A.K.SRINIVASAN
SRI.MATHEW JOHN

RESPONDENTS: RESPONDENTS:
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1. JOSE MATHEW,
EZHANIKKATTA HOUSE, P.O. CHUNGAKKUNNU,
VIA. KELAKAM, KANNUR DISTRICT.

2. NARANGOLI MUSTAFA, DRIVER,
S/O. MAMMU, NEAR MUBARAK L.P. SCHOOL,
JAGANNATHA TEMPLE ROAD, THALASSERY-2,
KANNUR DISTRICT.

3. M/S. NATIONAL INSURANCE COMPANY LTD.,
KANNUR.

BY ADVS. SRI.CIBI THOMAS -- R1 AND R2
SMT.SARAH SALVY -- R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 10/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & K.HEMA, JJ.

M.F.A.No.1026 of 2002

Dated this the 10th day of September, 2007

Judgment

Koshy,J.

On 12.10.1995, at about 1.00 noon, while the appellant was driving his taxi car KL/11-2493 along the Pappinissery-Sreekandapuram public road and when his vehicle reached Mangad, the mini lorry KL/10B-740 owned by the first respondent and driven the second respondent came rashly and negligently overtaking another lorry which was going in front of it and dashed against the appellant's taxi car causing extensive damage to the taxi car and serious injuries to the appellant. The accident was caused due to the rash and negligent driving of the second respondent who was the driver of the mini lorry. The car was badly damaged. On these allegations, appellant filed application for compensation claiming Rs.2,50,000/- for the injuries suffered and damages caused to the vehicle. Tribunal found that the accident occurred due to the rash and negligent driving of the mini lorry and the above lorry was insured by the third respondent insurance company. Only Rs.43,800/- was

awarded for injuries caused. No amount was awarded for damages caused to the car. Aggrieved by the above, the appeal was filed.

2. Immediately after the accident, the appellant was taken to the A.K.G. Hospital, Kannur from where he was referred to the Kasturba Hospital, Manipal and was admitted there as an inpatient on 12.10.1995. He was having injuries like hemarthosis of right knee joint, lacerated wound over the left arm, undisplaced fibula head fracture of the right leg etc. and was discharged on 20.10.1995 with his right leg in plaster and with directions to attend hospital for review. The appellant was again admitted on 9.12.1995 and discharged on 13.12.1995 and with directions to attend the hospital for review to continue exercises. Ext.A9 series are two medical certificats issued from Kasturba Hospital, Manipal. Ext.A1 is the copy of the wound certificate. Ext.A6 would show that he was hospitalised for 12 days and he had fracture of head of fibula with loss of ligament. According to the appellant, he is unable to drive a car. But, no permanent disability certificate was produced. Considering the nature of injuries, medical bills produced etc. tribunal has granted

Rs.43,000/- as compensation. The incident occurred in 1995. We are of the opinion that compensation granted for personal injuries was just and reasonable and no interference is required.

3. The car he was driving (KL/11-2493) was badly damaged. According to him, he spent an amount of Rs.1,12,992/- as repairing charges. Exts.A15 and A16 are the invoices of spare parts and job work bill. Considering the year of manufacture, surveyor assessed the damage at Rs.65,792/-. Ext.A12 is the surveyor's report. But, tribunal did not grant any compensation for the damage caused to the car. Ext.A11 shows that appellant purchased the car by agreement dated 30.10.1995. He was in possession of the car. He paid consideration and got possession of the car. Hence, it is contended that he is the owner of the car. Merely because registration certificate was not transferred in his name at the time of accident, it will not affect his rights as owner. PW3, police constable, deposed that after the accident, police took possession of the car and then it was given to PW4, brother of the appellant on kychit (Ext.X1) as appellant was hospitalised. Car was insured by the very same insurance company which insured

the mini lorry. Insurance company has no case that any other person has claimed compensation for damages to the car claiming to be the owner of the car. Apex Court in Pannalal v. Srichand Mal (1980 ACJ 233) held that failure to transfer the registration will not invalidate the sale even though it is the requirement of the Motor Vehicles Act to transfer the registration. Hon'ble Apex Court in Vasantha Viswanathan and others v. V.K. Elayalwar and others (2001 AIR SCW 3304) held that transfer is complete as per the contract after delivery of the car on payment of consideration. Same view was expressed in Dr.T.V.Jose v. Chacko P.M. (AIR 2001 SC 3939). But, Apex Court also held that as far as third parties are concerned, registered owner will continue to be liable. Here, car was damaged due to the negligence of the driver of the mini lorry. Hence, driver, owner and insurance company of the lorry is liable to pay the compensation to offset the damage of the car to the owner of the car. Appellant was the owner of the car at the time of the accident. Merely because transfer was not occurred, sale agreement cannot be discarded as the vehicle was in possession of the appellant at the time of accident and transferor or registered owner did not claim any damage. In this

connection, we are of the opinion that appellant is entitled to claim damage for the car as he was the owner of the car at the time of accident and was in possession of the car entitled to claim damages to the car.

4. Then the question is what is the amount to be paid for damages of the car. Ext.A15 copy of invoice, Ext.A16 job work bill and Ext.A13 receipt would show that he has spent Rs.1,12,992/- to make the car roadworthy due to the accident. According to the appellant, being a third party claim, entire amount shall be reimbursed to him as it is the duty of the respondent to make the car roadworthy and pay the entire repair charges. According to surveyor's report extent of damage is to the tune of Rs.65,792/- after depreciation etc. Report obtained from the surveyor shows that the car was 1989 model Diesel Ambassador car with tourist permit. Considering the survey report, the year of manufacture (1989) and bills produced, we are of the opinion that at least Rs.35,000/- as compensation for damages caused to the car. In the above circumstances, we modify the award and direct the third respondent insurance company to deposit Rs.35,000/- with 7% interest from the date of application till deposit over and above the compensation awarded by the

tribunal. On deposit of the above, appellant is entitled to withdraw the same.

Appeal is allowed partly.

J.B.KOSHY
JUDGE

K. HEMA
JUDGE

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A.NO.1026 OF 2002

Judgment

Dated:10th September, 2007